IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13681 of 2000

Between:

1. Shri Maruthi Textiles Karmika Sangam,

(Regd. No.F-1534), Nagari, Chittoor District,

represented by its President Sri V. Velan.

2. Shri Maruthi Textiles Workers Union,

(Regd. No.F-780), Nagari, Chittoor District,

represented by its President Sri B. Nageswara Rao.

3. Shri Maruthi Textile Employees Union, Nagari,

Chittoor District, represented by its President

Sri C. Munikrishnaiah.

..... PETITIONERS

AND

1. The Appellate Authority for Industrial and

Financial Reconstruction,

25, Kasturba Gandhi Marg, New Delhi.

2. The Board for Industrial & Financial

Reconstruction, 1, Tolstoi Marg,

Jawahar Vypara Bhavan, New Delhi.

3. Shri Maruthi Textiles Limited,

B-3, Gems Court, 14, Khadar Nawaz Khan Road,

Chennai.

4. The Chairman,

State Bank of India, Central Office,

P.B. No.12, Mumbai 400 021.

5. The Joint Secretary,

Government of Andhra Pradesh,

Industries & Commerce Department,

Secretariat, Hyderabad.

6. Telugu Nadu Workers Union,

represented by the President,

Railway Station Road,

Nagari 517 590, Chittoor District.

7. A.P. Industrial Development Corpn. Ltd.,

Parishrama Bhavan, 5-9-58/B,

Fateh Maidan Road, Hyderabad 500 029.

8. The Chairman & Managing Director,

ICICI (OA), 163 Backbay Reclamation,

Mumbai 400 020.

9. The Chairman, IDBI,

IDBI Towers, Cuffee Parade,

Mumbai 400 005.

10. The Regional Provident Fund Commissioner,

Employees P.F. Organisation,

25, Business Complex, Shivaji Marg,

New Delhi 110 015.

11. The Director,

Employees State Insurance Corporation,

ESIC Building, Kotla Road,

New Delhi 110 013.

12. The Additional Chief Officer,

Reserve Bank of India,

Industrial Export and Credit Department,

Central Office Building,

12th Floor, P.B. No.10030,

Mumbai 400 023.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to the order dated 21.7.2000 in Appeal No.171 of 2000 on the file of the Appellate Authority for Industrial and Financial Reconstruction, New Delhi, the first respondent herein, confirming the preliminary order dated 22.1.2000 of the BIFR *(and the final order dated 21.6.2000 of the BIFR) in case No.95 of 1995 and quash the same and direct the ICICI, the operating agency, to follow and act in accordance with the orders dated 26.6.1998 of the AAIFR.

*prayer is amended as per Court order dated 6.8.2004 in WPMP No.20302 of 2000.

Counsel for the Petitioners :MR.P.KAMALAKAR

Counsel for the Respondent Nos.4, 8 & 9: MR.DEEPAK BHATTACHARJEE

Counsel for the Respondent No.6 : Mr. L. J. VEERA REDDY

Counsel for the Respondent No.11 : Mr. B.G. RAVINDRA REDDY

Counsel for the Respondent Nos.1 to 3, 5, 7, 10 & 12:None appeared.

The Court made the following :

ORDER:

Shri Maruthi Textiles Limited (SMTL), the third respondent herein sought a reference before the Board for Industrial and Financial Reconstruction (BIFR). BIFR (Bench-3) by an order dated 22.1.2000 after hearing the necessary parties and also one Sri T. Nagaraju Naidu, President of Workers Union recorded proceedings on 22.1.2000. The opinion is to the following effect:

On consideration of the facts on record and the submissions made at today's hearing, the Bench formed a prima-facie opinion that the sick industrial company- M/s. Shri Maruthi Taxtiles Ltd., was not likely to make its net worth exceed the accumulated losses within a reasonable time, while meeting all its financial obligations. The company, as a result thereof, was not likely to become viable on a long-term basis and hence, it was just, equitable and in public interest that it was wound up and directed that a show cause notice be issued accordingly. Objections/suggestions would be heard on 25.5.20000 at 11.00 AM. The Bench also gave the following directions:

i) SBI would appoint a reputed firm of Chartered Accountants to carry out the

SIA of the company. It would also be inquired into whether the company had made deposit of 10% of the sale proceeds as per AAIFR directives.

ii) SBI would also file appropriate relevant documents with the Board to enable it to initiate/take action against the company/promoters u/s 24 and 33 of the Act.

Aggrieved by the prima facie opinion of BIFR as above, the SMT Karmika Sangam, SMT Workers Union and SMT Employees Union preferred appeal being Appeal No.171 of 2000 before Appellate Authority for Industrial and Financial Reconstruction, New Delhi under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985. The AAIFR by an order dated 21.7.2000 dismissed the appeal holding that as the Workers Unions did not submit any rehabilitation proposals, the question of inviting the Workers Unions for the joint meeting is irrelevant. Aggrieved by the same, the petitioners (Workers Unions) filed the present Writ Petition seeking for a writ of Certiorari. This Court admitted the writ petition on 27.7.2000 and stayed all further proceedings pertaining to the orders of the AAIFR.

The BIFR by proceedings dated 21.6.2000 in Case No.95 of 1995 came to the conclusion that SMTL is not likely to make its networth exceed its accumulated losses within a reasonable time and therefore ordered for winding up of the SMTL and it reads as follows:

On consideration of the facts on record and the submissions made at the hearing held on 25.5.2000, the Bench observed that there was no rehabilitation proposal with the means of finance fully tied up for consideration of the Board despite further opportunities having been given to all concerned. The Bench, therefore, confirmed its prima facie opinion that the sick industrial company M/s. Shri Maruthi Textiles Ltd., was not likely to make its networth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof, was not likely to become viable in the future and that it was just, equitable and in public interest that it was would up under Section 20(1) of the Act. The Bench directed that this opinion might be forwarded to the concerned High Court along with copies of all earlier orders/proceedings, for necessary action according to law.

As the order was received by the first petitioner subsequently, the petitioner moved an application in WPMP No.20302 of 2000 praying this Court to amend the writ prayer by which the petitioner seeks to challenge the final order of BIFR as well. The petitioner also filed WPMP No.23030 of 2000 seeking suspension of the final order proceedings of BIFR dated 21.6.2000 in Case No.95 of 1995. This Court by order dated 26.9.2000 suspended the final order of the BIFR. In the meanwhile, the proceedings of the BIFR were sent to this Court recommending winding up of the petitioner company. By reason of the interim orders passed by this Court on 26.9.2000 suspending the final orders of the BIFR, no progress could however be made.

I have heard the learned counsel for the petitioners Mr. P. Kamalakar, and learned Standing Counsel for State Bank of India and Industrial Credit and Investment Corporation of India Bank. The learned counsel for the petitioners does not dispute that against the final orders of the BIFR dated 21.6.2000, an appeal would lie to the AAIFR once again. Further as held by the Division Bench of this Court in **Industrial Finance Corporation of India Ltd. v. Sree Krishna Oil Complex Ltd.**, the advisory opinion of BIFR to wind up a sick company is not binding on the High Court (See para 14 of the said judgment). Therefore it is also open to the petitioner to appear before the Company Court and raise all objections.

In view of the disputed facts questions of fact whether T. Nagaraju Naidu represents the interest of the workmen or not and also various contentions raised herein, it would be in the interest of justice, to give liberty the petitioner to approach the AAIFR by filing appeal under Section 25 of the Act immediately. As and when such appeal is filed, the said Authority is requested to consider the request of the petitioners and pass appropriate orders on merits in accordance with law within a period of three months from the date of receipt of file of said appeal. It shall also open to the petitioner to obtain appropriate interim orders from the AAIFR.

The writ petition is accordingly disposed of.

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Date : August 06, 2004. **V.V.S. RAO, J**

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SPECIAL OFFICER.

// TRUE COPY //

SECTION OFFICER

To

1. The Appellate Authority for Industrial and
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